

113TH CONGRESS
2D SESSION

S. 2515

To ensure that Medicaid beneficiaries have the opportunity to receive care
in a home and community-based setting.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2014

Mr. HARKIN introduced the following bill; which was read twice and referred
to the Committee on Finance

A BILL

To ensure that Medicaid beneficiaries have the opportunity
to receive care in a home and community-based setting.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Community Integra-
5 tion Act of 2014”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The Supreme Court’s 1999 decision in
9 *Olmstead v. L.C.*, 527 U.S. 581 (1999), held that
10 the unnecessary segregation of individuals with dis-

1 abilities is a violation of the Americans with Disabil-
2 ities Act of 1990 (42 U.S.C. 12101 et seq.).

3 (2) Under Olmstead, individuals generally have
4 the right to receive their supports and services in
5 home and community-based settings, rather than in
6 institutional settings, if they so choose.

7 (3) Olmstead envisioned that States would pro-
8 vide appropriate long-term services and supports to
9 individuals with disabilities through home and com-
10 munity-based services and end forced segregation in
11 nursing homes and other institutions.

12 (4) While there has been progress in rebal-
13 ancing State spending on individuals with disabilities
14 in institutions as compared to home and community-
15 based settings, more than 75 percent of States con-
16 tinue to spend the majority of their long-term care
17 dollars on nursing homes and other institutional set-
18 tings, and the number of individuals with disabilities
19 under age 65 in nursing homes increased between
20 2008 and 2012.

21 (5) As of June 2013, there were more than
22 200,000 individuals younger than age 65 in nursing
23 homes—almost 16 percent of the total nursing home
24 population.

1 (6) Thirty-eight studies published from 2005 to
 2 2012 concluded that providing services in home and
 3 community-based settings is less costly than pro-
 4 viding care in a nursing home or other institutional
 5 setting.

6 (7) No clear or centralized reporting system ex-
 7 ists to compare how effectively States are meeting
 8 the Olmstead mandate.

9 **SEC. 3. ENSURING MEDICAID BENEFICIARIES MAY ELECT**
 10 **TO RECEIVE CARE IN A HOME AND COMMU-**
 11 **NITY-BASED SETTING.**

12 (a) IN GENERAL.—Section 1902(a) of the Social Se-
 13 curity Act (42 U.S.C. 1396a(a)) is amended—

14 (1) in paragraph (80), by striking “and” at the
 15 end;

16 (2) in paragraph (81), by striking the period
 17 and inserting “; and”; and

18 (3) by inserting after paragraph (81) the fol-
 19 lowing new paragraph:

20 “(82) in the case of any individual with respect
 21 to whom there has been a determination that the in-
 22 dividual requires the level of care provided in a nurs-
 23 ing facility, intermediate care facility for the men-
 24 tally retarded, institution for mental disease, or
 25 other similarly restrictive or institutional setting—

“(A) provide the individual with the choice and opportunity to receive such care in a home and community-based setting, including rehabilitative services, assistance and support in accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks, and assistance in acquiring, maintaining, or enhancing skills necessary to accomplish such activities, tasks, or services;

“(B) ensure that each such individual has an equal opportunity (when compared to the receipt and availability of nursing facility services) to receive care in a home and community-based setting, if the individual so chooses, by ensuring that the provision of such care in a home and community-based setting is widely available on a statewide basis for all such individuals within the State; and

“(C) meet the requirements of section 1904A (relating to the provision of care in a home and community-based setting).”.

(b) REQUIREMENTS FOR COMMUNITY CARE OPTIONS.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended by inserting after section 1904 the following new section:

1 “PROVISIONS RELATED TO HOME AND COMMUNITY-
2 BASED CARE

3 “SEC. 1904A. (a) DEFINITIONS.—For purposes of
4 this section, section 1902(a)(82), and section
5 1905(a)(4)(A):

6 “(1) ACTIVITIES OF DAILY LIVING.—The term
7 ‘activities of daily living’ includes, but is not limited
8 to, tasks such as eating, toileting, grooming, dress-
9 ing, bathing, and transferring.

10 “(2) HEALTH-RELATED TASKS.—The term
11 ‘health-related tasks’ means specific tasks related to
12 the needs of an individual, including, but not limited
13 to, bowel or bladder care, wound care, use and care
14 of ventilators and feeding tubes, and the administra-
15 tion of medications and injections, which, in the
16 opinion of the individual’s physician, can be dele-
17 gated to be performed by an attendant.

18 “(3) HOME AND COMMUNITY-BASED SET-
19 TING.—The term ‘home and community-based set-
20 ting’ means, with respect to an individual who re-
21 quires a level of care provided in a nursing facility,
22 intermediate care facility for the mentally retarded,
23 institution for mental disease, or other similarly re-
24 strictive or institutional setting, a setting that—

1 “(A) includes a house, apartment, town-
 2 house, condominium, or similar public or pri-
 3 vate housing where the individual resides that—

4 “(i) is owned or leased by the indi-
 5 vidual or a member of the individual’s fam-
 6 ily;

7 “(ii) ensures the individual’s privacy,
 8 dignity, respect, and freedom from coer-
 9 cion; and

10 “(iii) maximizes the individual’s au-
 11 tonomy and independence;

12 “(B) is integrated in, and provides access
 13 to, the general community in which the setting
 14 is located so that the individual has access to
 15 the community and opportunities to seek em-
 16 ployment and work in competitive integrated
 17 settings, participate in community life, control
 18 and utilize personal resources, benefit from
 19 community services, and participate in the com-
 20 munity in an overall manner that is comparable
 21 to that available to individuals who are not indi-
 22 viduals with disabilities; and

23 “(C) has the services and supports that the
 24 individual needs in order to live as independ-
 25 ently as possible.

1 “(4) INSTRUMENTAL ACTIVITIES OF DAILY LIV-
 2 ING.—The term ‘instrumental activities of daily liv-
 3 ing’ means activities related to living independently
 4 in the community and includes, but is not limited to,
 5 meal planning and preparation, managing finances,
 6 shopping for food, clothing, and other items, per-
 7 forming household chores, communicating by phone
 8 or other media, and traveling around and partici-
 9 pating in the community.

10 “(5) PUBLIC ENTITY.—The term ‘public entity’
 11 means a public entity as defined in subparagraphs
 12 (A) and (B) of section 201(1) of the Americans with
 13 Disabilities Act of 1990.

14 “(b) REQUIREMENTS FOR PROVIDING SERVICES IN
 15 HOME AND COMMUNITY-BASED SETTINGS.—With respect
 16 to the availability and provision of services under the State
 17 plan under this title, or under any waiver of State plan
 18 requirements (subject to section 3(d) of the Community
 19 Integration Act of 2014), in a home and community-based
 20 setting to any individual who requires a level of care pro-
 21 vided in a nursing facility, intermediate care facility for
 22 the mentally retarded, institution for mental disease, or
 23 other similarly restrictive or institutional setting, any pub-
 24 lic entity that receives payment under the State plan or

1 waiver for providing services to such an individual shall
2 not—

3 “(1) impose or utilize policies, practices, or pro-
4 cedures, such as unnecessary requirements or arbi-
5 trary service or cost caps, that limit the availability
6 of services in home and community-based settings to
7 an individual with a disability (including individuals
8 with the most significant disabilities) who need such
9 services;

10 “(2) impose or utilize policies, practices, or pro-
11 cedures that limit the availability of services in a
12 home and community-based setting (including assist-
13 ance and support in accomplishing activities of daily
14 living, instrumental activities of daily living, health-
15 related tasks, and rehabilitative services) based on
16 the specific disability of an otherwise eligible indi-
17 vidual;

18 “(3) impose or utilize policies, practices, or pro-
19 cedures that arbitrarily restrict an individual with a
20 disability from full and meaningful participation in
21 community life;

22 “(4) impose or utilize policies, practices, or pro-
23 cedures that unnecessarily delay or restrict the pro-
24 vision of services in a home and community-based
25 setting to any individual who requires such services;

1 “(5) fail to establish and utilize adequate pay-
2 ment structures to maintain a sufficient workforce
3 to provide services in home and community-based
4 settings to any individual who requires such services;

5 “(6) fail to provide information, on an ongoing
6 basis, to help any individual who receives care in a
7 nursing facility, intermediate care facility for the
8 mentally retarded, institution for mental disease, or
9 other similarly restrictive or institutional setting, un-
10 derstand the individual’s right to choose to receive
11 such care in a home and community-based setting;
12 or

13 “(7) fail to provide information to help any in-
14 dividual that requires the level of care provided in a
15 nursing facility, intermediate care facility for the
16 mentally retarded, institution for mental disease, or
17 other similarly restrictive or institutional setting,
18 prior to the individual’s placement in such a facility
19 or institution, understand the individual’s right to
20 choose to receive such care in a home and commu-
21 nity-based setting.

22 “(c) PLAN TO INCREASE AFFORDABLE AND ACCES-
23 SIBLE HOUSING.—Not later than 180 days after the en-
24 actment of this section, each State shall develop a state-
25 wide plan to increase the availability of affordable and ac-

1 cessible private and public housing stock for individuals
 2 with disabilities (including accessible housing for individ-
 3 uals with physical disabilities and those using mobility de-
 4 vices).

5 “(d) AVAILABILITY OF REMEDIES AND PROCE-
 6 DURES.—

7 “(1) IN GENERAL.—The remedies and proce-
 8 dures set forth in sections 203 and 505 of the Amer-
 9 icans with Disabilities Act of 1990 shall be available
 10 to any person aggrieved by the failure of—

11 “(A) a State to comply with this section or
 12 section 1902(a)(82); or

13 “(B) a public entity (including a State) to
 14 comply with the requirements of subsection (b).

15 “(2) RULE OF CONSTRUCTION.—Nothing in
 16 paragraph (1) shall be construed to limit any rem-
 17 edy or right of action that otherwise is available to
 18 an aggrieved person under this title.

19 “(e) ENFORCEMENT BY THE SECRETARY.—

20 “(1) IN GENERAL.—The Secretary may reduce
 21 the Federal matching assistance percentage applica-
 22 ble to the State (as determined under section
 23 1905(b)) if the Secretary determines that the State
 24 has violated the requirements of subsection (b).

1 “(2) RULE OF CONSTRUCTION.—Nothing in
2 paragraph (1) shall be construed to limit any rem-
3 edy or right of action that is otherwise available to
4 the Secretary.

5 “(f) REPORTING REQUIREMENTS.—With respect to
6 fiscal year 2016, and for each fiscal year thereafter, each
7 State shall submit to the Administrator of the Administra-
8 tion for Community Living of the Department of Health
9 and Human Services, not later than April 1 of the suc-
10 ceeding fiscal year, a report, in such form and manner
11 as the Secretary shall require, that includes—

12 “(1) the total number of individuals enrolled in
13 the State plan or under a waiver of the plan during
14 such fiscal year that required the level of care pro-
15 vided in a nursing facility, intermediate care facility
16 for the mentally retarded, institution for mental dis-
17 ease, or other similarly restrictive or institutional
18 setting, disaggregated by the type of facility or set-
19 ting;

20 “(2) with respect to the total number described
21 in paragraph (1), the total number of individuals de-
22 scribed in that paragraph who received care in a
23 nursing facility, intermediate care facility for the
24 mentally retarded, institution for mental disease, or

1 other similarly restrictive or institutional setting,
 2 disaggregated by the type of facility or setting; and
 3 “(3) with respect to the total number described
 4 in paragraph (2), the total number of individuals de-
 5 scribed in that paragraph who were transitioned
 6 from a nursing facility, intermediate care facility for
 7 the mentally retarded, institution for mental disease,
 8 or other similarly restrictive or institutional setting
 9 to a home and community-based setting, disaggre-
 10 gated by the type of home and community-based set-
 11 ting.”.

12 (c) INCLUSION AS A MANDATORY SERVICE.—Section
 13 1905(a)(4)(A) of the Social Security Act (42 U.S.C.
 14 1396d(a)(4)(A)) is amended by striking “other than” and
 15 inserting “including similar services such as rehabilitative
 16 services and assistance and support in accomplishing ac-
 17 tivities of daily living, instrumental activities of daily liv-
 18 ing, and health-related tasks, that are provided, at the in-
 19 dividual’s option, in a home and community-based setting
 20 (as defined in section 1904A(a)(3)), but not including”.

21 (d) APPLICATION TO WAIVERS.—Notwithstanding
 22 section 1904A of the Social Security Act (as added by sub-
 23 section (b)), such section, and sections 1902(a)(82), and
 24 1905(a)(4)(A) of the Social Security Act (42 U.S.C. 1396
 25 et seq.), as amended by subsections (a) and (c), respec-

1 tively, shall not apply to any individuals who are eligible
 2 for medical assistance for home and community-based
 3 services under a waiver under section 1115 or 1915 of
 4 the Social Security Act (42 U.S.C. 1315, 1396n) and who
 5 are receiving such services, to the extent such sections (as
 6 so added or amended) are inconsistent with any such waiv-
 7 er.

8 (e) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in para-
 10 graph (2), the amendments made by this section
 11 shall take effect on October 1, 2014.

12 (2) DELAY PERMITTED IF STATE LEGISLATION
 13 REQUIRED.—In the case of a State plan under sec-
 14 tion 1902 of the Social Security Act (42 U.S.C.
 15 1396a) which the Secretary of Health and Human
 16 Services determines requires State legislation (other
 17 than legislation appropriating funds) in order for the
 18 plan to meet the additional requirements imposed by
 19 the amendments made by this section, the State
 20 plan shall not be regarded as failing to comply with
 21 the requirements of such section 1902 solely on the
 22 basis of the failure of the plan to meet such addi-
 23 tional requirements before the 1st day of the 1st cal-
 24 endar quarter beginning after the close of the 1st
 25 regular session of the State legislature that begins

1 after the date of enactment of this Act. For pur-
2 poses of the previous sentence, in the case of a State
3 that has a 2-year legislative session, each year of
4 such session shall be deemed to be a separate reg-
5 ular session of the State legislature.

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